United States Department of Labor
Employees' Compensation Appeals Board

E.C., Appellant	)	
and	)	**Docket No. 07-697**
	)	**Issued: June 26, 2007**
DEPARTMENT OF THE TREASURY, INTERNAL REVENUE SERVICE, Morton Grove, IL, Employer	)	

Appearances:
Appellant, pro se
Office of Solicitor, for the Director

Case Submitted on the Record

DECISION AND ORDER

Before:
ALEC J. KOROMILAS, Chief Judge
DAVID S. GERSON, Judge
MICHAEL E. GROOM, Alternate Judge

JURISDICTION

On January 16, 2006 appellant filed a timely appeal from the June 22 and December 10, 2006 merit decisions of the Office of Workers' Compensation Programs, which denied her claim for compensation. Pursuant to 20 C.F.R. §§ 501.2(c) and 501.3, the Board has jurisdiction to review the merits of her claim.

ISSUE

The issue is whether appellant's injury on May 9, 2006 arose in the performance of duty.

FACTUAL HISTORY

On May 11, 2006 appellant, then a 58-year-old automation clerk, filed a claim alleging that she sustained an injury in the performance of duty on May 9, 2006: "Tripped on rug in atrium hallway at the 8125 bldg. entrance when returning to building to use the phone after hours." She stated that she tripped on a carpet runner and fell face down on the floor, badly

bruising her left ribs and hand. A manager reported the telephone conversation she had with appellant on May 11, 2006:

> "[The supervisor] asked [appellant] to tell her how she fell. [Appellant] said that she was at the job alone at 5:15 in the conference room looking for her bus. She said that when the bus didn't come she called to see when it was supposed to arrive. She went out when she saw the bus, she went out thru the front door that leads to the parking lot and tripped on the rug because the bus was leaving."

On May 17, 2006 the Office asked the employing establishment for additional information. The Office asked whether, at the time of injury, appellant was on premises that were owned, operated or controlled by the employing establishment. If so, the Office asked for a diagram showing the boundaries of the premises and the location of the injury site in relation to the premises. The Office also asked for the exact time of injury: "If the injury occurred more than 30 minutes outside the employee's usual work hours, have the official superior submit an explanation for the employee's presence on the premises at the time of the injury."

The manager responded on May 24, 2006:

> "At the time of injury the employee was on the premises that is not owned, operated or controlled by the [employing establishment]. The injury occurred in a public space area within the building.
>
> "The exact time of the injury was 5:15 p.m., per the claimant. The employee's normal tour of duty is Monday through Friday from 8:30 a.m. until 5:00 p.m. The employee had already left the building at 5:00 p.m. but then she returned later to make a [tele]phone call. That is when the employee's injury occurred."

In a decision dated June 22, 2006, the Office denied appellant's claim: "Since your injury occurred after your tour of duty and you reentered the building you were not in the performance of duty."

Appellant requested reconsideration. She explained that she was disabled by a previous injury and could only ride vehicles that assisted disabled persons. Appellant stated that she could not control what time the vehicle arrived at her workplace, and on May 9, 2006 the vehicle was very late. She added: "I was still at my workplace inside 8125 North River Drive where I fell when I tried to go back to my office area to call the company to explain why the bus left me, since I had come outside to be transported onto the bus."

On September 20, 2006 appellant argued that the Office should approve her claim for the following reasons:

> "1. The atrium is part of the Internal Revenue Service space for access to offices, conference rooms and bathrooms and for the overflow of taxpayers on peak days. Even if this was not IRS space, people have fallen outside of government property and are covered by workers' comp.

"2. I am an injured employee. I travel to work by a PACE bus equipped for the disabled. This bus often is late. That night it came after 5:15 p.m. I was looking for the bus and it left while I was standing in front of it. Because the bus left, I had to come back inside the building to call the company. I fell on my way inside the door.

"3. I was doing official telephone work until the bus came at 5:15 p.m."

In a decision dated October 10, 2006, the Office reviewed the merits of appellant's case and denied modification of its prior decision. The Office found that previous work-related injuries had no bearing on the present claim. The Office held that appellant removed herself from the performance of duty when she stopped working and left the building to catch her bus: "The Office finds that you stopped working and went outside to catch your bus after your tour of duty ended, and you returned back to the premises solely for personal reasons, therefore you are not considered to be in the performance of your federal job duties when the injury occurred."

LEGAL PRECEDENT

The Federal Employees' Compensation Act provides compensation for disability or death of an employee resulting from personal injury sustained while in the performance of duty.[1] The phrase "sustained while in the performance of duty" is regarded as the equivalent of the coverage formula commonly found in workers' compensation laws, namely, "arising out of and in the course of performance."[2] To arise out of employment, the injury must have a causal connection to the employment, either by precipitation, aggravation or acceleration. "Course of employment" relates to the elements of time, place and work activity: the injury must occur at a time when the employee may reasonably be said to be engaged in her employer's business, at a place where she may reasonably be expected to be in connection with her employment, and while she was reasonably fulfilling the duties of her employment or engaged in doing something incidental thereto.[3]

As to employees having fixed hours and a fixed place of work, injuries occurring on the premises while they are going to and from work before or after working hours or at lunchtime are compensable.[4] The course of employment for such employees embraces a reasonable interval before and after official working hours while the employee is on the premises engaged in preparatory or incidental acts. What constitutes a reasonable interval depends not only on the

[1] 5 U.S.C. § 8102(a).

[2] This construction makes the statute actively effective in those situations generally recognized as properly within the scope of workers' compensation law. *Bernard D. Blum*, 1 ECAB 1 (1947).

[3] *Eugene G. Chin*, 39 ECAB 598 (1988); *Clayton Varner*, 37 ECAB 248 (1985); *Thelma B. Barenkamp (Joseph L. Barenkamp)*, 5 ECAB 228 (1952).

[4] *Emma Varnerin, M.D.*, 14 ECAB 253, 254 (1963); 1 ARTHUR LARSON & LEX K. LARSON, LARSON'S WORKERS' COMPENSATION LAW ch. 13 (June 2006).

length of time involved but also on the circumstances occasioning the interval and the nature of the employee's activity.[5]

The premises of the employer, as that term is used in workers' compensation law, are not necessarily coterminous with the property owned by the employer. They may be broader or narrower and are dependent more on the relationship of the property to the employment than on the status or extent of legal title.[6] When the place of employment is a building, it is not necessary that the employer own or lease the place where the injury occurred. It is sufficient if the employer has some kind of right of passage, as in the case of common stairs, elevators, vestibules, concourses, hallways, walkways, ramps, foot bridges, driveways or passage ways through which the employer has something equivalent to an easement.[7]

ANALYSIS

Appellant had fixed hours and a fixed place of work. Her injury is considered to have arisen in the course of employment if it occurred (1) on the premises, (2) a reasonable interval after official working hours and (3) while she was leaving work, or engaged in preparatory or incidental acts. The Office denied her claim because she left the building after work, thereby, removing herself from the performance of duty. But leaving the building does not necessarily mean she left the premises. That depends on the relationship of the surrounding property to the employment. The Office did not sufficiently develop this evidence. The employing establishment submitted no diagram of the building and the surrounding property, including walkways, sidewalks, streets, the parking lot and the position of the bus stop. Appellant did not make clear exactly where she traveled from the time she left the building, intent on catching the bus, to the time she reentered the building and fell, nor did she make clear how long this took. The Board will set aside the Office decisions denying appellant's claim and remand the case for further development. After such further development as may be necessary, the Office shall issue an appropriate final decision on appellant's claim for compensation.

CONCLUSION

The Board finds that this case is not in posture for decision. Further development of evidence is necessary.

[5] *Nona J. Noel*, 35 ECAB 439 (1983); LARSON § 21.06.

[6] *Wilmar Lewis Prescott*, 22 ECAB 318, 320-21 (1971).

[7] LARSON § 13.04[3].

ORDER

IT IS HEREBY ORDERED THAT the October 10 and June 22, 2006 decisions of the Office of Workers' Compensation Programs are set aside and the case remanded for further action consistent with this opinion.

Issued: June 26, 2007
Washington, DC

Alec J. Koromilas, Chief Judge
Employees' Compensation Appeals Board

David S. Gerson, Judge
Employees' Compensation Appeals Board

Michael E. Groom, Alternate Judge
Employees' Compensation Appeals Board